

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Carl A. Saleeby, Special Referee

Case No. 2017-000966

RECEIVED

MAY 22 2017

SC Court of Appeals

Thomas E. Goodson, as Trustee of the Residuary
Beneficiaries Trust of the Estate of Margaret S.
Goodson and the Estate of Helen S. Goodson, Respondent,

v.

Harriet E. Wilmeth, Debra J. Freeman, Bank of
America, N.A., Lumber Yard, Inc., St. Bartholomew's
Episcopal Church, Canal Wood, LLC, Alexander C.
West, Alexander C. West, Jr., Airport Technologies, LLC,
Mutual Savings Bank, State of South Carolina Department
of Revenue, United States of America Acting through
the Department of Treasury/Internal Revenue Service,
Ford Motor Credit Company, LLC, James Gandy, Estate
of Amelia H. Anthony, Estate of Betty C. Wiggins,
Portfolio Recovery Assoc., South Carolina Department
of Probation, Parole and Pardon Services, Norwood
C. Bizzell, Ronert "B.W." Bizzell, William E. Bizzell,
Mary Lathan Steele, and Vicki Eaddy, Defendants,

Of Whom Debra J. Freeman is the..... Appellant.

INITIAL APPELLATE BRIEF

Robert E. Lee, Esquire
South Carolina Bar # 63052
Robert E. Lee, LLC
111 Witcover Street
Post Office Box 1096
Marion, SC 29571
Telephone: (843) 423-1313
Facsimile: (843) 423-1397
Email: rel@rellawfirm.com

Brittany C. Moore, Esquire S.C. Bar # 102780
Kenneth R. Moss, Esquire S.C. Bar # 15520
Wright, Worley, Pope, Ekster & Moss, PLLC
628-A Sea Mountain Highway
North Myrtle Beach, SC 29582
Telephone: (843) 281-9901
Facsimile: (843) 281-9903
Email: BrittanyMoore@wwpemplaw.com

Attorneys for Appellant

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in denying Defendant Debra J. Freeman's Motion to Dismiss the Judgment Foreclosure Action with respect to two judgments dated February 2, 2006, which had expired?

STATEMENT OF THE CASE

Respondent Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson ("Respondent"), filed a Complaint for Foreclosure of Judgment Liens on December 22, 2015 against numerous defendants, most of whom held judgment liens against Defendant Harriet E. Wilmeth ("Wilmeth"). (Compl. for Foreclosure.) Defendant Debra J. Freeman ("Freeman") filed her Amended Answer and Cross-Claim against Defendant Wilmeth on March 11, 2016. (Am. Answer & Cross-Claim.)

Respondent initially tried to schedule a hearing regarding his complaint before Carl. A. Saleeby, Special Referee, on February 19, 2016, before some Defendants had filed an answer. The hearing was postponed pursuant to an Order of Protection filed by Freeman's attorney, Robert E. Lee, who was scheduled to appear on that same day and time on behalf of a criminal client in General Sessions Court for Marion County. (Order of Protection; 2/17/16 Email Correspondence of Judge Henderson; 2/17/16 Email Attachment.)

After the court agreed to delay the hearing, Respondent took no further action to seek an alternative hearing date. On January 22, 2017, Defendant Bank of America filed a Motion for Summary Judgment. (Def. Bank of America's Mot. for Summ. J.) The court scheduled a hearing

on March 9, 2017 on Bank of America's hearing. (Notice of Hr'g 3/6/17.) On March 8, 2017, Freeman filed a Motion to Dismiss for lack of jurisdiction. (Def. Freeman's Mot. to Dismiss Pursuant to Rule 12(c), SCRCP.)

The hearing was held on March 9, 2017 on both Bank of America's Motion for Summary Judgment and on Freeman's Motion to Dismiss. At the hearing, Respondent's attorney noted that Bank of America's Motion for Summary Judgment had been "handled" and that Bank of America's mortgage was valid and was the first lien on Wilmeth and Freeman's real property. (3/9/17 Tr. of Hr'g 11:6-11.) This ruling was also presented in the court's Final Order. (Final Order 2, 13, 17.)

On April 7, 2017, the trial court entered its Final Order on the other issues presented at the March 9, 2017 hearing. The trial court denied Freeman's Motion to Dismiss. (Final Order 18.) The court also ordered that the Respondent shall have a judgment of foreclosure on the one-half undivided interest of Defendant Wilmeth in the described real estate. (Final Order 18-19.) The court ordered the sale of the property by a Special Referee and ordered that such sale will be subject to the first mortgage of Bank of America. (Final Order 18.)

Freeman filed her Notice of Appeal on April 19, 2017.

STATEMENT OF FACTS

Freeman and Wilmeth purchased a lot together in 1984 located at 1309 Quail Meadow Lane, Hartsville, South Carolina. (3/9/17 Tr. of Hr'g Pl.'s Ex. 1.) To build a home there, in 2002, Freeman and Wilmeth borrowed \$234,666 from Bank of America and granted a mortgage to Bank of America, which established a first lien on the property. (3/9/17 Tr. of Hr'g Pl.'s Ex. 2.) Freeman and Wilmeth each owned an undivided one-half interest in the property for decades. Both parties agreed to make equal payments on all household expenses, the mortgage, real estate taxes, and general maintenance. (3/9/17 Tr. of Hr'g 35:16-17.)

On February 20, 2006, a February 3, 2006 judgment was filed with the clerk of courts for Darlington County against Wilmeth, and in favor of the Estate of Helen Goodson, in the amount of \$317,960.97, arising from an unpaid obligation owed by Wilmeth. (3/9/17 Tr. of Hr'g Pl.'s Ex. 4.) Also on February 20, 2006, a February 3, 2006 judgment in the amount of \$150,000 against Wilmeth, and in favor of the Estate of Margaret S. Goodson, was filed with the clerk of courts for Darlington County, South Carolina, arising from another unpaid obligation owed by Wilmeth. (3/9/17 Tr. of Hr'g Pl.'s Exs. 7, 8.) The filings established judgment liens against Wilmeth's undivided one-half interest in the real property located at 1309 Quail Meadow Lane.

Wilmeth, an attorney, was subsequently charged with numerous crimes arising from her professional activities. In 2009, she was sentenced and incarcerated in the South Carolina Department of Corrections for a period of 18 months. During her postconviction time at the Quail Meadow Lane home, Wilmeth failed to make any payments toward to home, the mortgage, taxes, or maintenance. (Freeman's Answer to Compl.)

In November 2013, the two February 2006 judgments against Wilmeth, duly recorded in the office of the clerk of court for Darlington County, were both assigned to the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson, Thomas R. Goodson, Trustee, referred to as Respondent. (3/9/17 Tr. of Hr'g Pl.'s Exs. 5, 8.)

On December 22, 2015, Respondent filed a Complaint for Foreclosure of Judgment Liens. The action sought to foreclose on three judgment liens granted in favor of the Estate of Helen S. Goodson and/or the Estate of Margaret S. Goodson against Harriet E. Wilmeth and which allegedly constituted liens on Wilmeth's interest in the real property described above. The Complaint also acknowledges that approximately 29 other Defendants may also claim a judgment lien upon the same real estate pursuant to other judgments issued in their favor and against Wilmeth. (Compl. for Foreclosure.)

Respondent attempted to schedule a hearing on the Complaint for Foreclosure of Judgment Liens for February 19, 2016, before some of the Defendants answered or filed an appearance. Freeman's attorney, who had a conflict in a criminal case in Marion County Court of General Sessions on the same date and time as the hearing date Respondent proposed, filed an Order of Protection to reschedule the hearing. Lee was granted protection in the matter from the hearing scheduled for February 19, 2016. Respondent, however, made no attempt to reschedule the hearing at a time suitable for the Defendants and defense attorneys.

The Complaint for Foreclosure was dormant and no action had been taken by Respondent, or any other party, for more than 11 months, until January 27, 2017, when Bank of America, which held a first mortgage lien on Wilmeth's undivided one-half interest in the real property, filed a Motion for Summary Judgment. The court scheduled a hearing on the Motion

for Summary Judgment for March 9, 2017. Just prior to the hearing, Freeman moved to dismiss on the ground that two out of the three judgment liens Respondent was attempting to foreclose had expired. (Def. Freeman's Mot. to Dismiss.)

Bank of America's Motion for Summary Judgment was granted without dispute. (3/9/17 Tr. of Hr'g 11:6-11.) The March 9, 2017 hearing, therefore, focused on Freeman's Motion to Dismiss and on Freeman's counterclaim for damages against Wilmeth. On April 7, 2017, the special referee filed his Final Order, which formally granted Bank of America's Motion for Summary Judgment, denied Freeman's Motion to Dismiss, and ordered the sale of the one-half undivided interest of Wilmeth in the real property, subject to the mortgage lien of Bank of America.

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT FREEMAN'S MOTION TO DISMISS ON TWO EXPIRED JUDGMENTS

South Carolina law unequivocally states that judgment liens have a 10-year enforcement life before they expire. Specifically, section 15-39-30 of the South Carolina Code states:

Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

S.C. Code Ann. § 15-39-30. Also, regarding actions to enforce judgment liens on real property, as in the present case, section 15-35-810 states:

Final judgments and decrees entered in any court of record in this State subsequent to November 25, 1873, or in any circuit or district court of the United States within this State or of any other Federal court the final judgments and

decrees of which, by act of Congress, shall be declared to create a lien, shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree.

Id. § 15-35-810.

The gravamen of Freeman's Motion to Dismiss Respondent's foreclosure action is that the two judgment liens filed on February 20, 2006 expired 10 years later on February 20, 2016 and were therefore extinguished in March 2017 when Respondent finally sought a court order to foreclose on the liens. The trial court erred in denying Freeman's Motion and in failing to enforce these South Carolina statutes, which reflect a strong and long-standing public policy about judgment terms.

Under South Carolina law, a final judgment has "active energy" for a period of 10 years whether any return was or was not made during such period. *Home Port Rental, Inc. v. Moore*, 359 S.C. 230, 234, 597 S.E.2d 810, 812 (2003), *aff'd as modified*, 369 S.C. 493, 682 S.E.2d 862 (2006); *Hardee v. Lynch*, 212 S.C. 6, 46 S.E.2d 179 (1948). The South Carolina Supreme Court has consistently interpreted these statutes to mean that a judgment is "utterly extinguished . . . after the expiration of ten years from the date of entry." *Home Port Rental*, 359 S.C. at 234, 597 S.E.2d at 812. A judgment creditor is, therefore, required to respond and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period." *Id.*

In *Home Port Rental*, the South Carolina Supreme Court made an important distinction between the tolling of the statute of limitations for bringing an action initially, and executing on an already obtained judgment, which time period cannot be tolled. Courts have emphasized that

the 10-year period will not toll while a judgment creditor is out of state, and the discovery rule to delay or interrupt the 10-year period does not apply. 369 S.C. at 495, 682 S.E.2d at 865.

Additionally, a judgment creditor cannot disguise an attempt to act on an expired judgment lien. "South Carolina courts will not permit a litigant to bypass the ten-year limitation on executions by styling an action as something other than an action to execute." *Carr v. Guerard*, 365 S.C. 151, 616 S.E.2d 429 (2005). In that case, the court entered summary judgment in favor of a judgment debtor and dismissed an action brought by a judgment creditor for fraudulent conveyance. The court held that because the action was brought more than 10 years after entry of the judgment against defendants, the judgment creditor lacked standing to bring the action to void transfer of property and concluded that the fraudulent transfer action was nothing more than a way to bypass the 10-year limitation on execution of judgments. *Id.* at 154, 616 S.E.2d at 431.

Likewise, in *Hardee*, the court rejected any attempt by the judgment creditor to proceed in equity to recover on an expired judgment. The South Carolina Supreme Court stated:

Judgment liens are creatures of law, and cannot be enforced in equity when they have ceased to be enforceable at law. The plaintiff failed to take any steps to enforce this judgment while of active energy, with its lien intact, on the real estate of the judgment debtor. It would be a strange condition of the law if after the lien of a judgment on real estate had been lost, and after the plaintiff was powerless to enforce it by execution, and despite the fact that it was dormant and he could no longer give it new life by an action resulting in the recovery of a new judgment without leave of the court, he could nevertheless, through a direct proceeding in equity reach and sell the debtor's lands and subject his assets to the payment of the very same inactive judgment.

212 S.C. at 14, 46 S.E.2d at 182.

There are significant South Carolina public policy concerns and reasons for limiting the duration of the active life of a judgment. The public policy recognizes that there must be some finality to a judgment debtor's liability, and judgment creditors should be required to diligently pursue their collection efforts. *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 29, 382 S.E.2d 14 (1989). Further, judgment creditors should not rely on extensions if their collection efforts take longer than anticipated. *Comm'l Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.3d 123 (1999). "A judgment creditor should recognize this [public] policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period." *Id.* at 185, 512 S.E.2d at 128.

The trial court in the present case erred in failing to enforce sections 15-35-810 and 15-39-30, and the explicit public policy of the State of South Carolina. It erred by inexplicably permitting Respondent to finally seek an order of judgment foreclosure from the court on March 9, 2017 on two judgment liens which had expired and were extinguished on that date. Again, the judgments were filed with the clerk of courts in Darlington County, South Carolina on February 20, 2006, more than 11 years earlier. As in *Carr*, Respondents lacked standing on March 9, 2017 to ask the court for an order to foreclose on the two 2006 judgment liens.

For these reasons, and to preserve the long-standing public policy of South Carolina, this Court should reverse the trial court's Final Order dated April 17, 2017 with respect to the court's order denying Freeman's Motion to Dismiss. This Court should order unequivocally that the two 2006 judgment liens expired and were extinguished after the statutory 10-year period on February 21, 2016 and were not properly before the trial court on March 9, 2017.

II. *LINDA McCO. v. SHORE*, 390 S.C. 543, 703 S.E.2d 499 (2010), DOES NOT TOLL THE STATUTORY 10-YEAR ENFORCEMENT PERIOD OF THE TWO 2006 JUDGMENT LIENS

The trial court states in its Final Order dated April 7, 2017 that based on the South Carolina Supreme Court's ruling in *Linda McCo. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010), it "dismisses" Debra J. Freeman's Motion to Dismiss. This is error. The South Carolina Supreme Court specifically states in *Linda McCo.* that it was not changing South Carolina law with respect to the statutory 10-year judgment lien statutes and that its decision in that case applied only to the facts in that case. The trial court's application of the *Linda McCo.* holding to the facts in this case, which are wholly distinguishable from the facts in *Linda McCo.*, is tantamount to changing the long-standing public policy and statutory judgment lien 10-year limits in South Carolina, which it is not authorized to do.

In *Linda McCo.*, James and Jan Shore (the "Petitioners") gave Linda McCompany (the "Company") a judgment by confession in the amount of \$110,000. The judgment was filed on June 2, 1995. Soon thereafter, the Petitioners paid the Company one-half of the \$110,000 judgment. On February 20, 2004, the Company wrote and offered to remove all postjudgment interest on the remaining debt if the Petitioners agreed to pay the remaining \$55,000 by a certain date. After that date, Petitioners paid a portion of the remaining amount. The Company continued to pursue its collections efforts, including filing a petition for supplemental proceeds on August 9, 2004, which was referred to a special referee.

In both October 2004 and on May 24, 2005, within the 10-year active period of the Company's judgment, the special referee in the matter conducted hearings on whether the parties

had entered into an accord and satisfaction and other matters pertaining to the Company's collection efforts. Finally, on June 3, 2005, the special referee issued his final report, finding that the Petitioners owed post-judgment interest and that no accord and satisfaction had been reached. At the same time, the special referee issued an order to allow the Company to execute and levy upon all assets owed by Petitioners. Petitioners did not raise any issues about the extinguishment of the judgment lien.

On appeal, the South Carolina Court of Appeals refused to hear the Petitioner's argument that the judgment was void as of June 3, 2005 because the Petitioners had failed to preserve the issue on appeal. On appeal to the South Carolina Supreme Court, the Supreme Court acknowledged that the Petitioners lost the issue on preservation grounds, but it nevertheless took up the matter to clarify certain legal issues.

First, citing *Hardee*, 212 S.C. at 16-17, 46 S.E.2d at 183, the Supreme Court held that the Court of Appeals erred in concluding that section 15-39-30 was a statute of limitations. Second, the Court held that while section 15-39-30 is not a statute of limitations, "it operates like a statute of limitations," but only under unique facts of the case. Specifically, the Court carefully held:

Hence, while section 15-39-30 is not a statute of limitations, it operates like a statute of limitations under the facts presented here. *We want to stress that this is a narrow holding limited to facts similar to those at issue in this case.* Hence, when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court's order regarding execution and levy, the ten year limitation found in section 15-39-30 is extended to when the court finally issues an order. To hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period

Linda McCo., 390 S.C. at 554-55, 703 S.E.2d at 505 (emphasis added).

The *Linda McCo.* holding extending the 10-year limitations found in section 15-39-30, therefore, applies *only* to situations where the judgment creditor has diligently pursued its collection efforts; has both scheduled a hearing within the active period of the judgment lien; *and* has presented a case in favor of an order to execute or foreclose on the judgment liens within the active period of the judgment lien.

Importantly, the South Carolina Supreme Court *did not* hold in *Linda McCo.* that the mere filing of an action by the judgment creditor will toll the 10-year active life of a judgment lien. That would constitute a complete rewriting of the South Carolina statutes, which is outside of the court's scope. *See Rhame v. Charleston County Sch. Dist.*, 412 S.C. 273, 772 S.E.2d 159 (2015) (holding that courts must interpret statutes according to the statute's clear and unambiguous terms, and they must apply the statute according to its literal meaning). Instead, the extension allowed by the Supreme Court in *Linda McCo.* applies *only* where the judgment creditor's collections efforts are all within the active energy period of the judgment lien, including a hearing, and the judgment creditor is merely left waiting for the court's final order.

Again, under the *Linda McCo.* facts, the Company petitioned the court for supplemental proceedings. The special referee assigned to the case held several hearings on different matters related to the enforcement of the judgment and execution of the judgment liens. The last hearing was held on May 24, 2005, well within the active life of the judgment lien. The single remaining factor was the special referee's final report, which was issued on June 3, 2005, just one day after the 10-year judgment lien life.

By contrast, in the present case, the Respondent filed a complaint to foreclose on judgment liens within the 10-year active life of the two 2006 judgment liens. He made a hasty

but unsuccessful attempt to schedule a hearing on February 19, 2006. That hearing date was delayed because at least one attorney had a serious conflict. But then the Respondent made no attempt to reschedule a hearing on his action to foreclose on three judgment liens. It was defendant Bank of America's Motion for Summary Judgment that prompted the court to schedule a hearing on March 9, 2017. By that hearing date, however, the two 2006 judgment liens were no longer active but had expired and were extinguished as of February 20, 2016, more than one year earlier.

In order to fall within the *Linda McCo.* exception, Respondent could have scheduled a hearing at any date after the complaint was filed, and was available to the other attorneys, or he could have rescheduled the hearing for February 20, 2016. Under those circumstances, even if the special referee did not issue a final order until after the expiration of the 2006 judgment liens, the order would still be applicable under *Linda McCo.*

Significantly, however, the Respondent did not act diligently or take heed of the specific warnings by the South Carolina courts advising judgment creditors "to proceed expeditiously to conclude collections efforts within the ten year period." *Comm'l Credit Loans, Inc.*, 334 S.C. at 185, 512 S.E.2d at 128. It is not enough that Respondent commenced collection efforts within the 10-year period, he was also required to *conclude* those collection efforts.

The trial court failed to apply the specific and narrow holding of the *Linda McCo.* decision to the unequivocal facts in the present case. Instead, the trial court erroneously selected sentences in the *Linda McCo.* decision out of the factual context. In addition to the selected statements, the court in *Linda McCo.* emphasized that it was not just that the judgment creditor filed a supplemental proceeding within the active life of the judgment lien in question, but that

the judgment creditor also scheduled and attended hearings pertinent to that proceeding and that all matters related to the collection effort had concluded within the 10-year period.

What the trial court in the present case failed to address is that in *Linda McCo.*, unlike the present case, every collection effort within the judgment creditor's control had been completed within the 10-year active life of the judgment lien. Here, it is uncontested that the Respondent did not diligently pursue his collection efforts after filing his complaint in December 2015. He did not expeditiously proceed with *all* collection efforts within the 10-year deadline. Instead, the Respondent was extraordinarily tardy in filing a complaint to foreclose on judgment liens, and then once he did, he sat on his collection rights. South Carolina law does not allow the 10-year period to be tolled in any way under the plain and uncontested facts in this case.

As explained above, the narrow holding in *Linda McCo* does not apply to the facts in the present case. Here, the two 2006 judgment liens at issue in Freeman's Motion to Dismiss expired on February 20, 2016, well before the court hearing on the Complaint to Foreclose. The uncontested facts do not support any tolling or extension of the 10-year period set forth in sections 15-39-30 and 15-35-810. The trial court erred in concluding that the holding in *Linda McCo.* applied to this case, and erred in denying Freeman's Motion to Dismiss.

CONCLUSION

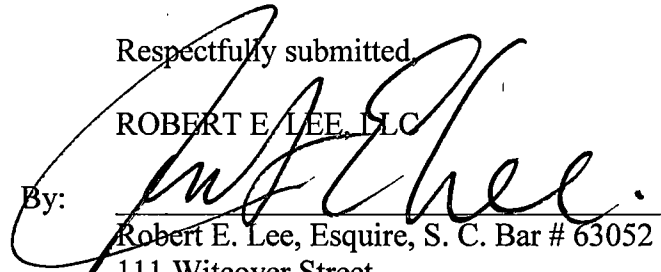
For each of the reasons stated herein, Appellant Freeman respectfully requests this Court to enter an Order reversing the Court of Common Pleas for Darlington County's Final Order dated April 17, 2017 on its conclusion that Freeman's Motion to Dismiss is denied, and order that the Court of Common Pleas for Darlington County had no jurisdiction over the two 2006 judgment liens, which had expired and were extinguished prior to the March 9, 2017 hearing on Respondent's Complaint to foreclosure judgments, and for whatever further relief this Court deems just and proper at this time.

Dated: May 19, 2017

Respectfully submitted,

ROBERT E. LEE, LLC

By:



Robert E. Lee, Esquire, S. C. Bar # 63052
111 Witcover Street
Post Office Box 1096
Marion, SC 29571
Telephone: (843) 423-1313
Facsimile: (843) 423-1397
Email: rel@rellawfirm.com

Brittany C. Moore, Esquire S.C. Bar # 102780
Kenneth R. Moss, Esquire, S.C. Bar # 15520
Wright, Worley, Pope, Ekster & Moss, PLLC
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Telephone: (843) 281-9901
Facsimile: (843) 281-9903
Email: BrittanyMoore@wwpmlaw.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Appellant's Designation of Record on Appeal and the Certification attached thereto, to be mailed, first-class postage prepaid to the following on this 19 day of May, 2017.

<p>J. Alex Stanton IV, Esquire Stanton Law Firm 954 West Carolina Avenue Hartsville, SC 29550 <i>Counsel for the Plaintiff</i></p> <p>Harriet E. Wilmeth 4245 Pinto Lane Myrtle Beach, SC 29588 <i>Defendant</i></p> <p>Caroline R. Glenn, Esquire Chad W. Burgess, Esquire Brock & Scott, PLLC 3800 Fernandina Road, Suite 110 Columbia, SC 29210 <i>Counsel for Defendant</i> <i>Bank of America, N.A.</i></p> <p>Phil Dixon, President Lumber Yard, Inc. P.O. Box 249 Hartsville, SC 29551 <i>Defendant</i></p> <p>John R. Chase, Esquire Haynsworth Sinkler Boyd, PA P.O. Box 340 Charleston, SC 29402-0340 <i>Counsel for Defendant</i> <i>St. Bartholomew's Episcopal Church</i></p>	<p>Martin S. Driggers Jr., Esquire Sweeny Wingate & Barrow, PA 115 Cargill Way, Suite B Hartsville, SC 29550 <i>Counsel for Defendants</i> <i>Alexander C. West and</i> <i>Alexander C. West, Jr.</i></p> <p>Theodore von Keller, Esquire Crawford & von Keller, LLC P.O. Box 4216 Columbia, SC 29240 <i>Counsel for Defendant</i> <i>Airport Technologies, Inc.</i></p> <p>Mutual Savings Bank 330 West Carolina Avenue Hartsville, SC 29550 <i>Defendant</i></p> <p>Brittany L. Kilpatrick, Esquire South Carolina Department of Revenue Office of General Counsel P.O. Box 12265 Columbia, SC 29211 <i>Counsel for Defendant</i> <i>South Carolina Department of Revenue</i></p> <p>William N. Nettles, Esquire United States Attorney 1441 Main St., Suite 500 Columbia, SC 29201 <i>Counsel for Defendant United States of</i> <i>America/Internal Revenue Service</i></p>
--	---

Frank R. Ellerbe III, Esquire
Sowell Gray Robinson Stepp &
Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
Counsel for Defendant
Canal Wood, LLC

William J. Tuck, Esquire
William J. Tuck, PA
P.O. Box 933
Darlington, SC 29540
Counsel for Defendant
James Gandy

D. Malloy McEachin Jr., Esquire
McEachin & McEachin, P.A.
323 South McQueen Street
Florence, SC 29501
Counsel for Defendant
Estate of Amelia H. Anthony

Richard E. Conner Jr., Esquire
The Conner Law Firm, P.C.
115 Cargill Way, Suite C2
Hartsville, SC 29550
Counsel for Defendant
Estate of Betty C. Wiggins

William E. Bizzell
1422 Waxhaw Way
Hartsville, SC 29550
Defendant

Mary Lathan Steele
214 E. Richardson Circle
Hartsville, SC 29550
Defendant

Adam S. Tesh, Esquire
Richardson Plowden & Robinson, PA
P. O. Drawer 7788
Columbia, SC 29202
Counsel for Defendant
Ford Motor Credit Company, LLC

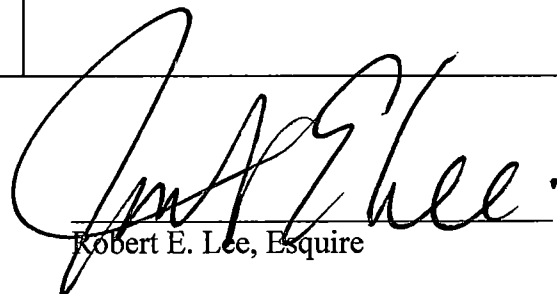
Trace M. Dillon, Esquire
The Dillon Law Firm, PC
2346 Wisteria Dr., Suite 220
Snellville, GA 30078
Counsel for Defendant
Portfolio Recovery Association

S.C. Department of Probation, Parole &
Pardon Services
P.O. Box 50666
Columbia, SC 29250
Defendant

Norwood C. Bizzell
1836 East Lindsey Avenue
Miamisburg, OH 45324
Defendant

Robert C. Bizzell
409 Goodson Road
Hartsville, SC 29550
Defendant

Vicki Eaddy
621 Lyndale Drive
Hartsville, SC 29550
Defendant



Robert E. Lee, Esquire

May 19, 2017

ROBERT E. LEE, ESQ

RECEIVED

REL@RELLAWFIRM.COM

T: (843) 423-1313

F: (843) 423-1397

MAY 22 2017

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

RE: *Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson, Respondent, v. Debra F. Freeman, et al., Appellant*

Case No.: 2017-000966

REL File No.: 22466

Dear Ms. Kitchings:

Enclosed for filing are an original and one copy each of the following documents regarding the above-referenced matter:

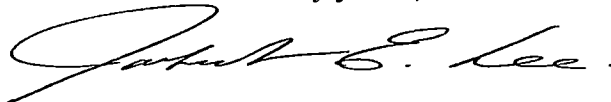
- a) Initial Appellate Brief and Certificate of Service; and
- b) Appellant's Designation of Matters to be Included in the Record on Appeal, Appellant's Certification, and Certificate of Service.

Please file the original documents with your Court and return filed copies to me in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, copies of these documents are being served upon all other counsel of record and parties *pro se*.

If you have any questions, please contact me or my Legal Assistant, Martha Pech.

Sincerely yours,



ROBERT E. LEE

ROBERT E. LEE, LLC
ATTORNEY - AT - LAW

111 WITCOVER STREET
MARION, SC 29571

MAILING ADDRESS
POST OFFICE BOX 1096
MARION, SC 29571

RELLAWFIRM.COM

REL:mhp

Enclosures

ccs: J. Alex Stanton, IV, Esquire
Stanton Law Firm
954 West Carolina Avenue
Hartsville, SC 29550

Ms. Harriet E. Wilmeth
4245 Pinto Lane
Myrtle Beach, SC 29588

Caroline R. Glenn, Esquire
Chad W. Burgess, Esquire
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Mr. Phil Dixon, President
Lumber Yard, Inc.
P. O. Box 249
Hartsville, SC 29551

John R. Chase, Esquire
Haynsworth Sinkler Boyd, PA
P. O. Box 340
Charleston, SC 29402-0340

Frank R. Ellerbe, III, Esquire
Sowell Gray Robinson Stepp & Laffitte, LLC
P. O. Box 11449
Columbia, SC 29211

Martin S. Driggers, Jr., Esquire
Sweeny Wingate & Barrow, PA
115 Cargill Way, Suite B
Hartsville, SC 29550

Theodore von Keller, Esquire
Crawford & von Keller, LLC
P. O. Box 4216
Columbia, SC 29240

Mutual Savings Bank
330 West Carolina Avenue
Hartsville, SC 29550

Brittany L. Kilpatrick, Esquire
South Carolina Department of Revenue
Office of General Counsel
P. O. Box 12265
Columbia, SC 29211

William N. Nettles, Esquire
United States Attorney
1441 Main St., Suite 500
Columbia, SC 29201

Adam S. Tesh, Esquire
Richardson Plowden & Robinson, PA
P. O. Drawer 7788
Columbia, SC 29202

William J. Tuck, Esquire
William J. Tuck, PA
P. O. Box 933
Darlington, SC 29540

D. Malloy McEachin, Jr., Esquire
McEachin & McEachin, P.A.
323 South McQueen Street
Florence, SC 29501

Richard E. Conner, Jr., Esquire
The Conner Law Firm, P.C.
115 Cargill Way, Suite C2
Hartsville, SC 29550

Trace M. Dillon, Esquire
The Dillon Law Firm, PC
2346 Wisteria Dr., Suite 220
Snellville, GA 30078

S.C. Dept. of Probation, Parole &
Pardon Services
P. O. Box 50666
Columbia, SC 29250

Mr. Norwood C. Bizzell
1836 East Lindsey Avenue
Miamisburg, OH 45324

Mr. Robert C. Bizzell
409 Goodson Road
Hartsville, SC 29550

Mr. William E. Bizzell
1422 Waxhaw Way
Hartsville, SC 29550

Ms. Mary Lathan Steele
214 E. Richardson Circle
Hartsville, SC 29550

Ms. Vicki Eaddy
621 Lyndale Drive
Hartsville, SC 29550



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ROBERT E. LEE
ATTORNEY-AT-LAW

POST OFFICE BOX 1096
MARION, SOUTH CAROLINA 29571

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MAY 22 2017

SC Court of Appeals

TO:

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

